IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10595 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAMLESHBHAI NARSANGHBHAI TAILOR

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 10595 of 2001

MR NM KAPADIA for Petitioner No. 1

MR S.S. PATEL, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 29/01/2002

ORAL JUDGEMENT

The detenu Kamleshbhai Narsangbhai Tailor has preferred this application through his brother Ajaybhai N. Tailor to assail an order of detention passed by the

Commissioner of Police, Surat City on August 10, 2001, in exercise of powers under Section 3 of PASA Act. The petitioner came to be detained as a boot-legger.

2. The grounds of detention indicate that the detaining authority took into consideration one offence registered against him on 16.5.2001. The authority also considered statements of two anonymous witnesses recorded on 24th May, 2001 and 25th May, 2001, which have been verified on 21st July, 2001. The authority has come to the conclusion that the activity of the detenu is anti-social and detrimental to public health and public order and therefore, passed the order on 10th August, 2001.

3. The order is assailed only on the ground of delay in passing the order. It is contended that both the statements were verified on 21st July, 2001, but however, the order was passed on 10th August, 2001 i.e. nearly after 18 days. It is contended that if the satisfaction recorded by the authority for the need for exercise of power under Sec. 3 of the PASA Act was genuine, the authority would have acted immediately after verification. The satisfaction recorded by the authority therefore is only verbal and mechanical and this would affect the exercise of power under Sec. 3 of the PASA Act and ultimately the order of detention and therefore, the petition may be allowed.

4. Learned AGP Mr. S.S. Patel has opposed to this petition.

5. There is no dispute about the factual aspect, namely that the statements were recorded on 24th and 25th May, 2001 and that they were verified on 21st July, 2001 by the detaining authority and the order was passed on 10th August, 2001. The authority has recorded that the activities of the detenu are detrimental to public health and public order and that he is immediately required to be prevented from pursuing his activity. The authority also recorded that resorting to ordinary law may not yield desired result and therefore, the detenu is required to be detained immediately. This satisfaction recorded by the authority is dehorse its own action. The authority has not taken any action for about 18 days and the order is passed only on 10.8.2001. Thus, the order suffers from the vice of delay apparently. If the satisfaction of the detaining authority for the immediate need for detaining the petitioner and for the need for exercise of powers under Section 3 of the PASA Act was genuine, the order would have been passed immediately

after verifying, but instead the order is passed after 18 days. There is nothing to indicate as to how the authority recorded his satisfaction for the exercise of powers under Section 3 of the Act. Consequently, the detention order and detention itself would be vitiated. The petition therefore deserves to be allowed on this ground.

6. The petition is therefore, allowed. Order of detention dated 10th August, 2001 passed by the Commissioner of Police, Surat City is quashed and set aside. Detenu Kamleshbhai Narsingbhai Tailor be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L. Dave,J.)